

Montana Department of Administration

Recovery Zone Bond Allocation Policy

I. Purpose

This policy sets forth the procedures under which the Department of Administration (the DOA) will reallocate to local issuers the volume cap conferred to the State of Montana under the American Recovery and Reinvestment Act of 2009 (ARRA) with respect to the bonding authority of issuers to issue Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds, as each are defined under ARRA (collectively, Recovery Zone Bonds).

Recovery Zone Economic Development Bonds are bonds created by the ARRA that provide an increased federal subsidy for government purpose projects for certain capital expenditures and job training and educational programs in issuer-designated “recovery zones.”

Recovery Zone Facility Bonds are tax exempt bonds created by the ARRA that can be issued to finance nongovernmental purposes that historically would not qualify for tax-exempt financing, where the proceeds of the bonds are used for certain property used for business within a recovery zone.

II. Introduction

Under Internal Revenue Service Notice 2009-50 (the Notice), which provides guidance with respect to the interpretation of the ARRA rules regarding Recovery Zone Bonds, counties in Montana that experienced decreased employment from December 2007 to December 2008 (as well as the city of Billings) received “suballocations” of Montana’s total allocated volume cap for both types of Recovery Zone Bonds. These suballocation amounts are provided in the Notice. Any county that has received such suballocation (as well as the city of Billings) is referred to herein as a “County.”

Under ARRA and the Notice, Counties receiving Recovery Zone Bond suballocations may waive all or any portion of such suballocations. The State of Montana is authorized to reallocate any such waived volume cap in any reasonable manner as it shall determine in good faith in its discretion.

Under ARRA and the Notice, Counties receiving Recovery Zone Bond suballocations may use such volume cap themselves for eligible costs or may allocate such volume cap received to other ultimate beneficiaries (including political subdivisions as defined for purposes of Section 103 of the Internal Revenue Code of 1986, as amended, and entities empowered to issue bonds on behalf of any such entity) in any reasonable manner as they shall determine in good faith in their discretion.

Under the ARRA, Recovery Zone Bonds must be issued by December 31, 2010.

Montana House Bill 645, passed by the 2009 Montana legislature, enables Montana counties and cities to designate recovery zones and issue Recovery Zone Bonds in accordance with existing bonding authority under Montana law.

House Bill 645 also provides that the DOA, in consultation with the Department of Commerce, shall allocate Montana's share of the Recovery Zone Bond volume cap to eligible issuers in the state unless the regulations adopted by the United States Secretary of the Treasury specify otherwise. It is the interpretation of the DOA that House Bill 645 allows the DOA to reallocate Recovery Zone Bond volume cap to the extent such volume cap is waived, deemed waived or not utilized in a timely manner.

In order for issuers in Montana to use Recovery Zone Bonds to finance eligible projects in an efficient, timely, and useful manner, the DOA adopts the following procedures for the reallocation and use of Montana's Recovery Zone Bond volume cap.

III. Procedures

A. Recovery Zone Bonding Authority Letter

The DOA shall provide by email a letter to each County and the City of Billings (each an "Issuer") that receives a suballocation of Recovery Zone Bond volume cap as provided in the Notice. The letter shall set forth the amount of such County's suballocation of Recovery Zone Economic Development Bond volume cap and such County's suballocation of Recovery Zone Facility Bond volume cap. The letter shall set forth the steps by which the County (a) must indicate its intent to use any portion of its Recovery Zone Bond volume cap, (b) must indicate its intent to reallocate any portion of its Recovery Zone Bond volume cap to an eligible issuer within its jurisdiction, and (c) may waive any portion of its Recovery Zone Bond volume cap. The DOA shall also provide by email a letter to counties and cities with email addresses explaining the procedures for obtaining reallocations of the volume cap if any becomes available. All letters shall include a copy of this Policy.

B. Utilization of Bonding Authority

In order for any County, as well as the City of Billings (the "City"), to use any portion of its allocation of Recovery Zone Bond volume cap, it must (a) adopt a resolution of its governing body creating and designating a "recovery zone" as such term is defined in the ARRA (the "Recovery Zone Resolution"), and (b) deliver a copy of such resolution, certified as to its content and adoption by a duly qualified officer of the County, to the DOA before October 1, 2009.

In addition, from the date of the adoption of the Recovery Zone Resolution, the County or the City must deliver to the DOA quarterly until the closing date of the Recovery Zone Bonds, a certificate stating that the County or the City is progressing with due diligence toward the issuance of its Recovery Zone Bonds. The required certificates must be delivered to the DOA each quarter on or before the following dates: January 1 2010, April 1, 2010, July 1, 2010 and October 1, 2010.

A County's Recovery Zone Bond volume cap will be deemed to be waived and such volume cap may be reallocated by the DOA to another issuer to the extent a County fails to provide the continuing information and updates described in Section B above.

The procedures set forth in Section B above also apply to any issuer to whom any allocation of Recovery Zone Bond volume cap has been reallocated.

C. Reallocation of Bonding Authority by Counties

A County may reallocate any portion of its bonding authority to an eligible issuer within its jurisdiction by delivering to the DOA before October 1, 2009 a signed County Bonding Authority Waiver and Reallocation Form specifying the issuer to which the Recovery Zone Bond volume cap will be reallocated and the amount of such reallocation.

D. Waiver of Bonding Authority

A County may waive any portion of its allocation of Recovery Zone Bond volume cap by delivering to the DOA before October 1, 2009 a signed County Bonding Authority Waiver and Reallocation Form.

Any other issuer that has received a reallocation of Recovery Zone Bond volume cap may waive any portion of such allocation by delivering to the DOA before October 1, 2009 a signed County Bonding Authority Waiver and Reallocation Form.

Any portion of Recovery Zone Bond volume cap allocated to a County or other issuer will be deemed waived and may be reallocated by the DOA (a) to the extent the County or other issuer does not elect to utilize such allocation according to the procedures set forth in Section B above or fails to carry out such procedures, (b) to the extent the County or other issuer does not elect to reallocate such allocation according to the procedures set forth in Section C above or fails to carry out such procedures, or (c) to the extent any County has not specified to the DOA by October 1, 2009 whether its allocation of Recovery Zone Bond volume cap is reallocated, waived or intended to be utilized.

The DOA will send notice by email that the allocation has been deemed waived. The DOA may reallocate any waived or deemed waived amount of Recovery Zone Bond volume cap to another issuer according to the provisions of Section E.

E. Reallocation of Volume Cap by the DOA

Although the DOA may reallocate Recovery Zone Bond volume cap in any reasonable manner as it shall determine in good faith in its discretion, it is the policy of the DOA to reallocate Recovery Zone Bond volume cap such that as much of Montana's allocation of Recovery Zone Bond volume cap as possible may be utilized before December 31, 2010.

The DOA may reallocate any portion of Recovery Zone Bond volume cap that has been waived by a County or other issuer from the time of such waiver.

The DOA may reallocate any portion of Recovery Zone Bond volume cap that has been deemed waived from October 1, 2009.

The DOA shall post on its website under the heading “Recovery Zone Bonds” the amount of volume cap available to be reallocated to eligible projects every month as well as copies of this Policy, a Bonding Authority Application Form and a Bonding Authority Waiver/Reallocation Form. The DOA shall provide a copy of all such documents to MACO and the League of Cities and Towns with a request that they be posted on their respective websites.

The DOA shall form a committee composed of representatives from the Department of Commerce and the Governor’s Economic Development Office to review such applications and to make determinations as to reallocation of Recovery Zone Bond volume cap. In making its determinations, the committee shall consider the following criteria:

1. Timeliness of the application
2. Viability of the project to be financed by the Recovery Zone Bonds
3. Estimated economic growth and development impact of the project
4. Number of jobs estimated to be created or saved by the project
5. Cost of the project

The DOA shall require any issuer to which it has reallocated Recovery Zone Bond volume cap to deliver to the DOA quarterly until the closing date of the Recovery Zone Bonds, a certificate stating that the issuer is progressing with due diligence toward the issuance of its Recovery Zone Bonds. The required certificates must be delivered to the DOA each quarter on or before the following dates: January 1 2010, April 1, 2010, July 1, 2010 and October 1, 2010.